IN THE HIGH COURT OF CHHATTISGARH AT BILASPUR

W.P.NO. 594 / **2003**

PETITIONER: -

Prakash Chandra Patel, S/o Shri Makradhwaj Patel, Gram Panchayat Chuchumada, Vikas Khand Dabhra, District Janjgir-Champa, (C.G.).

V/s

RESPONDENTS: -

1. State of Chhattisgarh through the Secretary Panchayat Avem Gramin Vikas Vibhag, D.K.S.Bhawan Raipur, (C.G.).
2. The Collector, District Janjgir-Champa (C.G.).
3. Sub Divisional Officer (Revenue) Dabhra, District Janjgir-Champa, (C.G.).
4. Janpad Panchayat, Dabhra Through the Chief Executive Officer, District Janjgir-Champa , (C.G.).
5. Gram Panchayat Chhuchhubhata, Through The Sarpanch, Janpad Panchayat, Dabhra, District Janjgir-Champa, (C.G.).
6. Gram Sabha Chhuchhubhata, Through the Secretary, Janpad Panchayat, Dabhra, District Janjgir-Champa, (C.G.).

P. R. No. Asstt/03
Presented by Shri Mahesh Pandey
dated 10.02.03

(5)

(2)

WRIT PETITION UNDER ARTICAL 226/227 OF THE CONSTITUTION OF INDIA FOR ISSUE OF AN APPROPRIATE WRIT IN THE NATURE OF MANDAMUS / CERTIORARI ETC. OR DIRECTION / ORDER IN THE LIKE NATURE ETC.

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HIGH COURT OF JUDICATURE AT BILASPUR, CHHATTISGARH

Writ Petition No.594 of 2003

Prakash Chandra Patel

Versus

State of Chhattisgarh & Others

POST FOR ORDER ON 15th MARCH, 2004

Sd/-
L.C. Bhadoo
Judge

(177)

HIGH COURT OF JUDICATURE AT BILASPUR (CHHATTISGARH)

Single Bench*: Hon'ble Shri L.C. Bhadoo J.

Writ Petition No.594 of 2003

Prakash Chandra Patel

Versus

State of Chhattisgarh & Others

Present:
Shri Rajesh Pandey, counsel for the petitioner.
Shri Satish Gupta, Deputy Govt. Advocate for respondents 1 to 3.
Shri Ranbir Singh, counsel for respondent No.4.
Shri Rajeev Shrivastava, counsel for respondent No.5.

O R D E R

(Passed on 15th March 2004)

The petitioner has preferred this writ petition under Article under Articles 226/227 of the Constitution of India challenging the order dated 29-1-2003 whereby the services of the petitioner were terminated from the post of Panchayat Karmi.

(2) The petitioner's case is that he was appointed as Panchayat Karmi on 15-12-1995 by the Gram Panchayat Chhuchhubhata and since then he is working on the post of Panchayat Karmi. On 4-11-2002, the Sarpanch of Gram Panchayat Chhuchhubhata called his explanation regarding discharge of duties. The petitioner submitted his reply on 6-11-2002 which is Annexure-p/3. Thereafter the Sarpanch again called for further explanation vide Annexure-P/4 from the petitioner on the ground that the explanation offered by him is not clear and truthful to which the petitioner replied on 8-11-2002 vide Annexure-P/5. In the meeting dated 8-11-2002 Panch of village Panchayat namely, Vijay Lal snatched the Panchayat Karyawahi Register

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from the petitioner at the instance of Sarpanch. Against which the petitioner made complaint to respondent No.4 on 11-11-2002 against Sarpanch and Panchas as per Annexure-P/6. Again the meeting of the Panchayat was held on 14-11-2002 in which the Sarpanch along with Padmalochan, Vidyadhar, Chandan Singh, Bhagwat and Jitram had taken forcibly Gram Sabha Register and Gram Sabha Upasthiti Panji from the petitioner, against which the petitioner made complaint on 15-11-2002 to respondent No.2 and to the police Station Dabhra on 16-11-2002. Copy of the same is Annexure-P/7.

(3) On 25-11-2002, the petitioner was served with a notice dated 18-11-2002 issued by respondent No.4 for making an enquiry against the petitioner regarding complaint in six points. Copy of the notice is Annexure-P/8. But, no charge sheet was served upon the petitioner upon which the enquiry was proposed to be conducted. Respondent No.4 recorded the statement of Sarpanch and Panchayat and thereafter the petitioner was called upon to explain on 15-1-2003 vide Annexure-P/9 of which the petitioner submitted his reply on 23-1-2003. A panchayat meeting was called on 27-1-2003 and the petitioner was called with all the records. Copy of those panchayat meeting is Annexure-P/11. On 28-1-2003 to remove the petitioner from the post of Panchayat Karmi a Gram Sabha meeting was convened against which the petitioner moved the Sub Divisional Officer and the S.D.O. granted stay. But, in spite of that the respondents removed the petitioner by meeting dated 28-1-2003.

(4) The further case of the petitioner is that respondents removed the petitioner without following the procedure prescribed in Panchayat Service (Discipline and Appeal) Rules, 1999 (herein after referred to as 'the Rules, 1999). The disciplinary authority was required to follow the Rule-7 of the said Rules for imposing major penalty. But, that was not adopted and the services of the petitioner were terminated in arbitrary and discriminatory manner without following the procedure.

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(5) On the other hand, return has been filed on behalf of respondent No.5, Sarpanch of the village in which respondent No.5 denied the allegations of the petitioner and it is alleged that the petitioner had interpolated the Gram Sabha register and, therefore, on the basis of the irregularities committed by the petitioner, a request was made by the Sarpanch and all the Panchas of Gram Panchayat Chhuchhubhata to the Chief Executive Officer, Janpad Panchayat, Dabra to conduct an enquiry against the petitioner. The said request was submitted to the Chief Executive Officer, Janpad Panchayat, Dabra on 11-11-2002 vide Annexure-R/5/4. Apart from making interpolation in the minutes of the Gram Panchayat record, there were complaints against the petitioner that he was not performing his duties and distributing the pension to the claimants. In this regard, a complaint was made by the villagers and in the enquiry the statements of the villagers were recorded by the Chief Executive Officer, Janpad Panchayat, Dabra and report was submitted vide Annexure-R/5/7. On the basis of that explanation of the petitioner was called on 15-1-2003. The copy of the same was received by the petitioner on 17-1-2003.

(6) On 27-1-2003 a meeting of the Gram Panchayat was called. In the said meeting Gram Panchayat resolved on the basis of majority to remove the petitioner from the post of Panchayat Karmi which was put to the Gram Sabha which resolved on 28-1-2003 to remove the petitioner vide Annexure-R/5/11.

(7) Return has also been filed on behalf of respondents 1 to 3 in which it has been stated that the petitioner has not filed the appeal, therefore, he has not availed the provisions of Section 91 of the Chhattisgarh Panchayat Raj Avam Gram Swaraj Adhiniyam, 1993. Therefore, alternative remedy was available to the petitioner and he has directly approached to this Court. It is incorrect to say that the procedure prescribed in the Panchayat Service (Discipline and Appeal) Rules, 1999 has not been followed and the enquiry was conducted by the petitioner as per the procedure prescribed in the Rules, 1999.

(8) I have heard the learned counsel for the parties.

(9) As far as the question of alternative remedy was available to the petitioner, the petitioner, in this petition, has challenged that the enquiry was not conducted in accordance with the Panchayat Service (Discipline and Appeal) Rules, 1999 and the petitioner was not given any opportunity. Moreover, the case of the petitioner is that his legal right has been violated, as the enquiry was not conducted as per the procedure prescribed and the disputed facts are not involved in this case. Moreover, the rule of an alternative remedy is the rule of discretion and not of law. Therefore, In view of the above, I am of the opinion that the writ petition is maintainable.

(10) The first objection raised by the learned counsel for respondents was that since the petitioner was working as Panchayat Secretary, therefore, as per the proviso to sub-rule (3) of Rule-1 'the rules of Chhattisgarh Panchayat Service (Discipline and Appeal) Rules, 1999 are not applicable to the petitioner.' The proviso to sub-rule(3) of Rule-1 lays down that "provided that nothing in these rules shall apply to officers and servants of the state service who are posted under the Panchayats under Section 69 or are on lone service to the panchayats under Section 71 of the Act." The petitioner in this petition has categorically stated that he was appointed as Panchayat Karmi on 15-12-95 and since then he is working as Panchayat Karmi. In one of the explanations it has appeared that since the post of Panchayat Secretary was vacant, therefore, the petitioner was directed to look after the work of the Panchayat Secretary. Therefore, I do not find any substance in the arguments of the learned counsel for respondents. Even if we rely on the document filed by the counsel for respondents after arguments were over that the petitioner was declared as Panchayat Sachiv as per the Collector's order dated 10-12-99, even then the proviso applies only to those officers who are on deputation and only to the officers of the State services who are appointed as Panchayat Secretary under Section 69 and it is not applicable to the Panchayat Karmis who are working as Panchayat Secretary. Therefore, rules of 1999 were applicable in the case of the petitioner.

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(11) Rule 5 of the said Rules prescribed the penalties and sub-rule (b) of Rule-5 prescribed **Major Penalties**. Sub-rule (1) of Rule-7 lays down that "no order, imposing on a member of the Panchayat Service, any of the penalties specified in clause (iv) to (via) of rule 5 shall be passed except after a formal inquiry is held as far as may be, in the manner hereinafter provided." Since the major penalty was imposed on the petitioner, therefore, the procedure as envisaged in rule 7 ought to have been followed by the respondents.

(12) If we look into the sub-rules 2, 3, 4, 5, 6, 7, 8, 9, 10, & 11 of the said Rules, none of these rules were followed by the respondents in conducting the enquiry because the disciplinary authority did not frame definite charges on the basis of the statements of allegations and such charges were not communicated along with the statements of allegations and to require him to submit his written statement of defence nor he was informed as to whether he desires to be heard in person. In this case contradictory stand has been taken by the respondents. In one place they are saying that the Chief Executive Officer of the Gram Panchayat, Dabra was appointed as Enquiry Officer whereas, the enquiry report has been submitted by the Committee consisting of three persons namely, the Chairman, Dabra, Tehsildar, Dabra and the Chief Executive Officer, Janpad Panchayat Dabra. During the enquiry also it appears from the statements of the witnesses that no opportunity was given to the petitioner to cross-examine the witnesses. Even after the submission of the report by the Enquiry Committee, the report of the Enquiry Committee and the notice of the proposed penalty were not given to the petitioner nor he was asked as to whether he was willing to appoint anyone in his defence as defence nominee. Therefore, the enquiry was conducted totally in disregard and contravention of Rule 7 of the Rules, 1999, therefore, whole enquiry stands vitiated.

(13) Learned counsel for respondents while placing reliance on the judgment of the Hon'ble Apex Court in the matter of **State Bank of Patiala and others versus S.K. Sharma** reported in **(1996) 3 Supreme Court Cases**

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364 argued that the petitioner himself participated in the enquiry and even his statement was recorded by the Enquiry Committee, therefore, he had waived all his rights and now, he cannot challenge the procedure of the enquiry by way of this writ petition. He has not raised any objection at the time of the enquiry.

(14) As has been mentioned above, the enquiry has been conducted in total disregard of the provisions of Rule-7 of the Rules 1999. No charges were framed nor the charge sheet and the statements of allegations were served on the petitioner nor the other procedure prescribed in the sub rules (6), (7), (8), (9) & (10) was followed in this case. From the perusal of the statements of the witnesses it does not appear that the opportunity was given to the petitioner to cross-examine the witnesses, but he had not cross-examined the witnesses. The facts of the judgment cited by the learned counsel for respondents are of no assistance in this case for the reason that in that case the delinquent employee raised objection in the writ petition that the copies of statements of two witnesses which were recorded during the preliminary enquiry were not given to the employee and the Hon'ble Apex Court held that:-

> "the employee was allowed to inspect the statements of those two witnesses 3 days prior to the date of the enquiry. He inspected the statements and at the time of enquiry he had not asked for copies of those statements, therefore, in the circumstances, he waived his right."

the Hon'ble Apex Court further held that:

> "Object of the rule of, is to ensure that there would not be failure of justice- Where State or public interest requires curtailing of the rule, court should balance that interest with the requirements of natural justice."

Therefore, the facts of the present case are totally different from the above facts of the judgment of the Hon'ble Apex Court. In this case the enquiry was conducted totally in disregard of the rule-7 of the Rules, 1999.

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(15) Therefore, in view of the above, I am of the opinion that the enquiry was conducted totally in disregard of the rule-7 of the Rules-1999; therefore, the order of termination of the petitioner is liable to be quashed.

(16) In the result, the writ petition is allowed and the order dated 29-1-2003 (Annexure-P/1) terminating the services of the petitioner is quashed. The respondents shall be at liberty to proceed with the matter in accordance with law.

(17) Looking to the facts and circumstances of the case, cost is made easy.

Sd/-
L.C. Bhadoo
Judge

Parve*